

REMARKS

This Amendment is responsive to the Office Action mailed November 21, 2007. The Action considered claims 13, 15, 17, 19, 20, 22, 24, and 26-61. With this Amendment, claims 26, 28, 29, 31, 33, 35, 37, 38, 40-42, 53, 55, 56, 58, and 60 are amended, and claims 27, 30, 32, 34, 36, 39, 41, 43-52, 54, 57, 59, and 61 are canceled without prejudice to or disclaimer of the subject matter recited therein.

Allowable Claims

Applicants thank the Examiner for the indication that claims 13, 15, 17, 19, 20, 22, and 24 are allowable.

Restriction Requirement

Based on the indication of allowable subject matter, and Applicants' request that claims dependent upon allowable claims be rejoined, the Examiner has withdrawn the restriction requirement with regard to claims 26, 28, 29, 31, 33, 35, 37, 38, 40-42, 44, 46, 47, 49-51, 53, 55, 56, 58, and 60, and those claims have been rejoined.

Applicants thank the Examiner for rejoining and considering the withdrawn claims.

Specification and Drawings

Applicants thank the Examiner for withdrawing the objections to the specification and drawings.

Claim Rejections – 35 U.S.C. § 101

The Office Action newly rejects claims 26, 28, 29, 31, 33, 35, 37, 38, 40-42, 44, 46, 47, 49-51, 53, 55, 56, 58, and 60 under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter, for encompassing human beings. The Office Action suggests addressing this rejection by amending any claim that refers to an "animal" to a "non-human animal."

In response, Applicants note that the claims have been amended, an explanation of which is provided below in the discussion of the rejections under 35 U.S.C. § 112, first paragraph.

Claim Rejections – 35 U.S.C. § 112, First Paragraph

The Office Action rejects claims 26, 28, 29, 31, 33, 35, 37, 38, 40-42, 44, 46, 47, 49-51, 53, 55, 56, 58, and 60 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement. Briefly, and simply stated, the Examiner's rejections are based on the fact that transgenic animal technology in this area is very unpredictable. The Examiner refers to Zbikowska et al. (Transgenic Research (2002) 11: 425-435) and to Kwon et al. (Journal of Cellular Biochemistry (2006) 99: 462-477) to demonstrate that the pre- and post-filing art support the unpredictability of this area. The Examiner further refers to Robl et al. (Theriogenology (2007) 67:127-133) to show the advanced state of the art, yet that many obstacles still remain. The Examiner also points out that the specification exemplifies production of a transgenic mouse, but not any other non-human mammal.

In response to the rejections under 35 U.S.C. §§ 101 and 112, first paragraph, Applicants note that the claims have been amended. Each instance of the word "animal" has been replaced with "mouse" (or "mice," as appropriate). Applicants respectfully submit that this amendment should not be viewed as an agreement or acquiescence with the outstanding rejections. Rather, it is simply made to advance prosecution.

Applicants respectfully request withdrawal of the rejections under 35 U.S.C. §§ 101 and 112, first paragraph.

Claim Rejections – 35 U.S.C. § 112, Second Paragraph

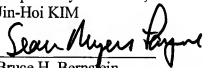
The Office Action rejects claims 53, 55, 56, 58, and 60 under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. In particular, the Office Action takes issue with the recitation of "useful protein" in the preamble of these claims, and raises particular questions about what renders a protein "useful."

In response, Applicants note that the claims have been amended. Each instance of “useful protein” has been replaced with erythropoietin, or EPO. Applicants respectfully submit that while “useful protein” would be clearly understood by a person of ordinary skill in the art, “erythropoietin,” or “EPO” would be clearly understood as well.

Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 112, second paragraph.

In view of the foregoing amendments and remarks, Applicants respectfully submit that all of the pending claims are in condition for allowance. Should there be any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
Jin-Hoi KIM



Bruce H. Bernstein
Reg. No. 29,027 42,920

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GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191